

PUBLIC LAW BOARD NO. 1760

Award No. 120

Case No. 120
Carrier File MW-FTW-84-48

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement
of Claim: L. G. Thimlar-Disqualified as foreman.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, on December 11, 1986, was serving as Extra Gang Foreman on the 6W Extra Gang located at Montpelier, Ohio. Roadmaster R. L. Grubb on that date had instructed Claimant to spike, line and gauge a switch at Kunkle, Ohio. Additionally, Grubb instructed Claimant to cross-level the eastbound switch at Pergo, Ohio. Grubb also sent Assistant Roadmaster E. L. Chestney to the work site to insure that the work instructions were properly carried out and to show Claimant exactly how he wanted the switch spiked and lined before leaving Kunkle.

Upon Chestney's return to Kunkle that evening he inspected Claimant's work and found that Claimant had not properly spiked and gauged the track. Instead Claimant had left the track with a half inch wide gauge. Chestney also inspected the cross-leveling at Pergo and found a joint raised 1 1/2 inch at this location, which was a quarter of an inch outside of the permissible limits and required that a slow order be placed on the track which he did not do. That failure required Chestney to place the slow order. Thereafter, Chestney discussed Claimant's unacceptable work performance with Roadmaster Grubb via telephone. In view of the fact that this was a culmination of several other similar incidents while Foreman of the Gang, Assistant Roadmaster Chestney, on December 11, wrote a letter advising Claimant that he:

"was disqualified as Extra Gang Foreman on the 6W Extra Gang located at Montpelier, Ohio."

The Claimant, Mr. Thimlar, signed that letter that he "accepted and fully understood the above."

The BMWE on December 12, 1986 requested an "unjust treatment" investigation on behalf of the Claimant which was held on January 27, 1987. As a result thereof, the Division Engineer concluded that Claimant was properly disqualified

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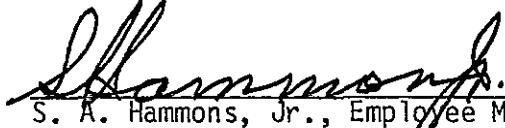
from his position of Foreman of Extra Gang 6W, and, in addition, removed Claimant from the Foreman's seniority roster.

Claimant was accorded the due process to which entitled under his discipline rule.

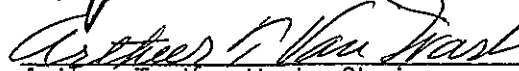
There was sufficient information adduced to support Carrier's conclusion as to the disqualification. The removal of Claimant's seniority as a Foreman occurred after the holding of an investigation. The record reflects numerous incidents of Claimant's failures to satisfactorily perform the duties of his position. Arbitral authority holds that Claimant has the burden of proof in disqualification cases to establish clearly with sufficient probative evidence that Carrier was not justified in taking that action. On this record the Claimant failed therein. Carrier was neither arbitrary or capricious in taking the action that it did.

This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


E. E. Miller, Carrier Member


Arthur I. Van Wart, Chairman
and Neutral Member

Issued September 27, 1990.